

Meeting Attendees	
Name	Organization
Doug Nelson (Co-Chair)	Missouri Office of Administration
Sandy Johnson (Co-Chair)	St. Louis University School of Law
Anne Curchin	Missouri Hospital Association
Mary Jo Feldstein-Condon	St. Louis Area Business Health Coalition
Susan Hinck	Missouri Health Advocacy Alliance
Amy Hoyt	UME – Center for Health Policy
Pam Jodock	Anthem
Sandra Johnson	St. Louis University
Charlotte Krebs	Primaris
Tom O'Donnell	Polsinelli Shugart
Gerald Sill	Missouri Hospital Association
Pam Victor	HealthCare USA
Staff	
Laurie Hines	Missouri Department of Health and Senior Services
Charlotte Krebs	Primaris
Melinda Dutton	Manatt Health Solutions
Helen Pfister	Manatt Health Solutions
Kier Wallis	Manatt Health Solutions

Next Meeting	<p>Tuesday, February 23rd, 2:30 – 5:00 pm CT</p> <p><i>The Workgroup will meet bi-weekly; in-person attendance is strongly recommended. 205 Jefferson Street, 10th Floor, Conference Room B, Jefferson City, MO. A one-way conference line will be made available for participants: Dial-in: 866.922.3257 Passcode: 57683250#.</i></p>
Action Items	<p>Please contact Workgroup staff (contact information below) with questions about the Workgroup framework, process, or timeline.</p> <ul style="list-style-type: none"> ➤ Review and provide feedback on the Draft Strategic Plan; send feedback to kwallis@manatt.com ➤ Individuals are encouraged to share comments on the Meaningful Use Notice of Proposed Rulemaking (NPRM) with Workgroup staff and Co-Chairs. ➤ Workgroup participants to send suggestions of additional stakeholders to ckrebs@primaris.org.
Content Reviewed	<ul style="list-style-type: none"> ➤ Local Counsel Update ➤ HHS Privacy and Security Framework Principles ➤ Key Learnings from Consent Webinar & Path Forward ➤ Strategic Plan Update ➤ Review Proposed Workgroup Work Plan ➤ Next Steps

**Key
Commentary
& Discussion**

Local Counsel Update

- Polsinelli Shugart (Polsinelli) has been retained as local counsel for the ongoing initiative

HHS Privacy and Security Framework Principles

- Five important principles that should guide the Workgroup as policies are developed
 - Openness and transparency
 - Individual Choice
 - Collection, use and disclosure limitation
 - Individual access
 - Correction

Legislation

- There are a few pieces of proposed legislation related to HIE that have been filed in the current session.
 - The State is monitoring the legislation and is in contact with the legislation's sponsors.
 - The Workgroup will be updated if/as legislation progresses.
 - The Workgroup will be provided with the bill numbers and links (see action items); links are posted to the MO-HITECH website under resources <http://dss.mo.gov/hie/index.shtml>

State Consent Policy Webinar in Review

- 3 participants – NeHII, VIHIE, MAeHC
- States that participated in the State Consent Policy Webinar did not require legislation to move forward with their efforts
 - Law is no less complex in other states than in Missouri

Consent Model Discussion

Opt-in v. Opt-out

- The Workgroup must work with local counsel to determine if there is anything in Missouri law that would require an opt-in or opt-out model.
 - Is there anything in state law that would establish different requirements for different types of information?
 - Other states have had high rates of consumer participation regardless of model
 - States with opt-in model have "refresh" policies that establish a time/remind when patients have the opportunity to "refresh" their consent
 - *The Workgroup will work with local counsel to determine if there are any requirements in state law that would inform a refresh policy*
 - Workgroup participants may look into organization's business policies (e.g. Anthem/Wellpoint)
 - NeHII's "global" consent policy is administered at the point of disclosure; patients can access/download a consent form online and submit it to a participating provider or complete the form at the provider's office

Treatment of Sensitive Information

- States participating in the webinar do not give patients the ability to exclude sensitive information; the Workgroup requested additional information around:
 - MAeHC's model that silos information on a provider basis; patients may be able to exclude information on a provider-basis
 - NeHII's policy to exclude patients with sensitive health information; how does NeHII determine whether a record contains sensitive health information? *Other states have reported difficulties identifying sensitive information.*
 - If a patient with an existing record in NeHII has sensitive health information added to his or her record is the record then excluded/removed from NeHII?
 - Does NeHII's technology have the capability to identify sensitive health information? If so, can the software also filter out this information?

Permissible Uses of Health Information Accessed through the HIE

- States participating in the webinar allow the use of health information for treatment, payment, and operations (TPO); clarifications around these initiatives policies were discussed, including:
 - VHIE: Provides for specific patient authorization to use health information for marketing, health plan quality reviews, etc.
 - MAeHC: Does not permit payer access to data; established a quality warehouse to aggregate and analyze data for provider performance reports
 - NeHII: Payment is limited to eligibility verification by payers
 - *In both VHIE and MAeHC, the use of information for TPO requires an affirmative opt-in*
- HIE initiative policies do not impact a physician's use of his or her EMR in his or her practice
- There are current processes in place in the paper-world that provide an alternative for patients who do not participate in the exchange
- HIPAA sets the "floor" for privacy and security policies; most states have established policies that are stricter than HIPAA; HIE initiatives must analyze state law to ensure compliance with state privacy and security policies
 - HIPAA and many state laws pre-date HIE; as a result, patient consent must be reconsidered in the context of HIE
 - State laws may not be clear on all aspects of HIE (e.g. MAeHC referenced "reading the tea leaves")
- HIE initiatives seem to be generally prioritizing clinical data over claims data; the focus of HIE initiatives has been on facilitating the exchange of information for purposes of patient treatment
 - Processing of claims and eligibility transactions is already taking place in the current health care system
 - The CMS Notice of Proposed Rulemaking (NPRM) references electronic claims processing
- *The Workgroup requested that law enforcement and fraud and abuse be evaluated as a potential use of information; this should not be prioritized over clinical information*

Break the Glass/Emergency Access to Information

- If a patient has opted-in or consented to release his or her information for

- purposes of the statewide HIE, there is no need for a break the glass policy
- VHIE: Data is not loaded until the patient affirmatively opts-in
 - *The Workgroup requested a clarification on MAeHC's break the glass policy*
 - It is likely that emergency room physicians will want access to patient information and drive/support a break the glass policy
 - *The Workgroup is interested in learning how often break the glass policies have been executed among fully operational RHIOs; has there been a real need for the policy?*
 - Proxy consent for access differs from break the glass because the proxy has been assigned responsibility to make care decision on an individual's behalf
 - There may not be a need for a break the glass policy in the context of an opt-out model if the patient has been contacted, "informed," and affirmatively opted-out of the exchange
 - Attorneys would likely rather defend a provider who acts on a patient's behalf and "breaks the glass," rather than causing patient harm due to a lack of information
 - The Workgroup should not assume that patient information will be "held" by the Statewide HIO
 - The Technical Infrastructure Workgroup is addressing the technical model; updates on the Workgroup's progress will be provided to the Legal/Policy Workgroup
 - The Legal/Policy Workgroup should document its recommendations to inform the Technical Infrastructure Workgroup
 - *The Workgroup will work with local counsel to understand if there are any existing state laws that address the provision of care without informed consent*
 - This question must be addressed, but is not top priority as the Technical Infrastructure Workgroup is clarifying the technical model/approach

Minor Consent

- Consent for treatment must be distinguished from consent to disclosure of information for purposes of minor consent; this distinction should be carried into local counsel's research around state laws specific to minor consent
 - VHIE: Minors may consent to certain treatment/services, but information will not be filtered or excluded from their records
- There are likely minor disclosure/consent limitations in current state law; the Workgroup will work with local counsel to understand any existing limitations
- *The Workgroup requested follow up as to how NeHill's minor consent policy is implemented; this was unclear during the webinar*

Next Steps: Define what information is being considered for purposes of exchange (e.g. prescriptions, labs, continuity of care document (CCD))

- The Statewide HIO must provide a certain level of information to physicians to make their participation in the exchange valuable; the Statewide HIO should not create duplicative information or services
- When is patient consent administered? Should consent be administered at the point when data is "loaded" into the exchange, or at the point of treatment?
 - Registration process; incorporate into the HIPAA consent form
 - Time of treatment

	<ul style="list-style-type: none"> ▪ Other state example: The New York Department of Health established a process by which providers uploaded patient data into the exchange without patient consent; the point of disclosure was determined to be upon provider access to the data, requiring patient consent ▪ Must consider the implications for provider participation in the exchange – will the exchange be valuable if information is not available until affirmative patient consent? • There are a series of state law cases that establish a relationship among the provider, patient, health plan, and hospital to protect patient information. Case law must be considered to understand implications for the contemplated consent models. The Workgroup will work with local counsel to understand these implications. <p>Suggested Four-Prong Process for Assessing Legal Questions</p> <ol style="list-style-type: none"> 1. What is <i>legally permissible</i> according to current state and federal law? 2. What is <i>acceptable</i> from a provider perspective? 3. What is <i>feasible</i> from a technology perspective? <ul style="list-style-type: none"> ▪ For example, a by-provider consent policy (e.g. MAeHC) may not be feasible in a large state 4. What is <i>acceptable</i> from a consumer perspective? <p>Draft Workplan</p> <ul style="list-style-type: none"> • At the next Workgroup meeting the Workgroup will revisit many of the issues presented in the Workgroup meeting with input from local counsel <ul style="list-style-type: none"> ▪ The question around “refresh” of patient consent will be added to the list of items for discussion ▪ Minors will be addressed in two meetings ○ The Workgroup will also need to address individuals who are incapacitated; local counsel will outline how policies/limitations currently address this issue in MO for presentation at a later meeting in March ○ The Workgroup requested clarification around responsibility for agreements among the participants and the Statewide HIO – which group will be responsible? ○ The Workgroup will likely host a 4 As Webinar on March 23rd ○ The Workgroup staff will be checking in with other Workgroups to ensure recommendations are communicated and aligned
<p>Key Decisions</p>	<ul style="list-style-type: none"> ➤ Choice between opt in and opt out rests on state law – is there anything in state law that requires Missouri to go with opt in v opt out? ➤ The Workgroup will work with local counsel to determine if there are any requirements in state law that would inform a refresh policy • The Workgroup requested that law enforcement and fraud and abuse be evaluated as a potential use of information; this should not be prioritized over clinical information • The Workgroup requested a clarification on MAeHC’s break the glass policy and additional information about how often break the glass policies have been utilized • The Workgroup will work with local counsel to understand if there are any existing state laws that address the provision of care without informed consent

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Workgroup Staff Contact Information	<ul style="list-style-type: none"> ➤ Laurie Hines - Laurie.Hines@dhss.mo.gov ➤ Melinda Dutton - mdutton@manatt.com ➤ Helen Pfister - hpfister@manatt.com ➤ Kier Wallis - kwallis@manatt.com